federal register

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PART IV

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

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REQUIREMENT TO WITHDRAW OR SUPPLEMENT PROPOSALS TO DETERMINE VARIOUS U.S. TAXA OF PLANTS AND WILDLIFE AS ENDANGERED OR THREATENED OR TO DETERMINE CRITICAL HABITAT FOR SUCH SPECIES

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Requirement to withdraw or supplement proposals to determine various U.S. taxa of plants and wildlife as Endangered or Threatened or to determine Critical Habitat for such species.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service provides notice that proposals to list certain species of plants and wildlife as Endangered or Threatened or to determine Critical Habitat for such species pursuant to the Endangered Species Act of 1973 do not meet requirements set forth in the Endangered Species Act Amendments of 1978 (Public Law 95-632, 92 Stat. 3751). Proposals to list species will require supplementation prior to the issuance of final rules. Specifically, the Service will determine whether critical habitat should be proposed for these species. Proposals to determine Critical Habitat are withdrawn and will require re-proposal if appropriate.

FOR FURTHER INFORMATION CONTACT:

John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, Washington, D.C. 20240 (703-235-2771).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Service has made a number of proposals to list species of plants and wildlife as Endangered or Threatened or to determine Critical Habitat for such species pursuant to the Endangered Species Act of 1973. These proposals, made before the Endangered Species Act Amendments of 1978 (hereinafter, Amendments) became effective, do not fulfill certain requirements set forth in that legislation. Specifically, the Amendments require that:

1. A proposal to list a species as Endangered or Threatened be accompanied, to the maximum extent prudent, by a specification of Critical Habitat for the species to be listed, and that notice of any proposal which specifies Critical Habitat be published in a newspaper of general circulation in or adjacent to such habitat.

2. The substance of the FEDERAL REGISTER notice of any proposal to determine a species as Endangered or Threatened or specify its Critical Habitat be offered for publication in appropriate scientific journals.

3. All general local governments located within or adjacent to a proposed Critical Habitat be notified of the proposed regulation at least 60 days before its effective date.

4. A public meeting (and if requested, a public hearing) be held on any proposed regulation which specifies Critical Habitat within the area in which such habitat is located in each State, and, if requested in each such State.

5. A public meeting be held on a proposed regulation which does not specify Critical Habitat if such a meeting is requested by any person within 45 days of the date of publication of the notice of proposal.

6. Any proposed regulation which includes a specification of Critical Habitat be accompanied by a brief description and evaluation of those activities which may adversely modify such habitat or may be impacted by such specification.

7. In determining the Critical Habitat of any Endangered or Threatened species, consideration be made of the economic impact, and any other relevant impacts, of specifying any particular area as Critical Habitat and that any such area may be excluded from a Critical Habitat if the benefits of such exclusion are found to outweigh the benefits of specifying the area as part of the Critical Habitat and if the exclusion would not result in the extinction of the species.

Actions affected by these requirements include:

1. Proposals to list species. These now require supplementation, to the maximum extent prudent, by proposals of Critical Habitat as a result, the Service will propose critical habitat for these species if appropriate. The public will be afforded full opportunity to comment on any such proposal;

2. Proposals to determine Critical Habitat. These are withdrawn, and

3. Proposals to list species and determine Critical Habitat. These are withdrawn only to the extent that they propose Critical Habitat and otherwise require supplementation by proposal of Critical Habitat in the manner discussed above.

All withdrawals made pursuant to this notice are conducted voluntarily by the Service to comply with the provisions of the Endangered Species Act Amendments of 1978 set out above. Because the withdrawals are not required by section 11(5) of the Amendments, the Service need not comply with the requirements of that section prior to reproposal.

Affected proposals are listed below, referenced by publication of notice in the FEDERAL REGISTER:

Proposed title	Date of notice	FR reference
Proposed Endangered status for 216 species appearing on Convention on International Trade [1].	Sept. 26, 1975	40 FR 44329-33
Proposed Endangered or Threatened status for 32 U.S. snails [2]	April 28, 1976	41 FR 17742-6
Proposal to determine 2 birds, 1 lizard, 3 snails, and 1 insect, all indigenous to the California Channel Islands, to be Endangered species [3].	June 1, 1976	41 FR 22073-5
Proposed Endangered status for some 1700 U.S. vascular plant taxa [4]	June 16, 1976	41 FR 24524-72
Proposed determination of Critical Habitat for Grizzly Bear	Nov. 5, 1976	41 FR 48757-9
Proposed Endangered or Threatened status for 41 U.S. species of Fauna [5].	Jan. 12, 1977	42 FR 2507-15
Proposed determination of Critical Habitat for 6 butterflies and 2 plants [6].	Feb. 8, 1977	42 FR 7972-75
Proposed Threatened status and Critical Habitat for the black toad	March 11, 1977	42 FR 13567-69
Proposed determination of Critical Habitat for the Houston Toad [7]	May 26, 1977	42 FR 27009-11
Proposed determination of Critical Habitat for the woundfin	Nov. 2, 1977	42 FR 57329-30
Proposed Endangered status and Critical Habitat for 4 fishes	Nov. 29, 1977	42 FR 60765-68
Proposed Endangered listing and Critical Habitat determination for the Virginia and Ozark big-eared bats.	Dec. 2, 1977	42 FR 61290-92
Proposed Endangered status and Critical Habitat for 5 fishes	Dec. 30, 1977	42 FR 65209-12
Proposed Endangered status for the bonytail chub and Threatened status for the razor back sucker.	April 24, 1978	43 FR 17375-77
Proposed determination of Critical Habitat for the Maryland darter	May 12, 1978	43 FR 20518-19
Proposed Endangered status and Critical Habitat for 2 species of Turtles.	May 19, 1978	43 FR 21702-5
Proposed determination of Critical Habitat for the hawksbill sea turtle.	May 24, 1978	43 FR 22224-5
Proposed listing and Critical Habitat determination for 2 Hawaiian cave arthropods.	June 16, 1978	43 FR 26084-7
Proposed determination of Critical Habitat for the Santa Cruz long-toed salamander.	June 22, 1978	43 FR 26759-60
Proposed Endangered or Threatened status or Critical Habitat for 10 butterflies or moths.	July 3, 1978	43 FR 28938-45
Proposed Endangered status and Critical Habitat for the Illinois mud turtle.	July 6, 1978	43 FR 29152-4
Proposed listing and Critical Habitat determination for a fish and a salamander.	July 14, 1978	43 FR 30316-9
Proposed Endangered or Threatened status and Critical Habitat for 10 beetles.	Aug. 10, 1978	43 FR 35636-43
Proposed Endangered and Threatened status and Critical Habitat for 3 Texas fishes.	Aug. 15, 1978	43 FR 36117-20
Proposed Critical Habitat for the whooping crane	Aug. 17, 1978	43 FR 36588-90
Proposed Endangered status and Critical Habitat for the Beaver Dam Slope population of the desert tortoise.	Aug. 23, 1978	43 FR 37662-5
Proposed Endangered status and Critical Habitat for the Virgin River chub.	Aug. 23, 1978	43 FR 37668-70
Proposed Critical Habitat for the Colorado squawfish	Sept. 14, 1978	43 FR 41060-2
Proposed listing and Critical Habitat determination for the Coachella Valley fringe-toed lizard.	Sept. 28, 1978	43 FR 44806-8

[1] Requires supplementation only insofar as it applies to the species listed below. The remaining taxa affected by this proposal have already been the subjects of a final rulemaking.

Molluscs:

Lampsilis satura—plain pocketbook mussel.

[2] Requires supplementation except insofar as it applies to the species listed below, which have already been the subject of a final rulemaking.

Snails:

Anguispira picta—painted snake coiled forest snail.
Discus macclintocki—Iowa Pleistocene snail.
Mesodon clarki nantahala—noonday snail.
Orthalicus reses—Stock Island tree snail.
Polygyriscus virginianus—Virginia fringed mountain snail.
Succinea chittenangoensis—Chittenango ovate amber snail.
Triodopsis platysayides—flat-spired three-toothed snail.

[3] Requires supplementation only insofar as it applies to the species listed below. The remaining taxa affected by this proposal have either been previously withdrawn or have already been the subjects of a final rulemaking.

Insects:

Coenonycha clementina—San Clemente coenonycha beetle.

[4] Requires supplementation except insofar as it applies to the following species, which have already been subjects of final rulemakings.

Plants:

Betulaceae, Birch family: *Betula uber*—Virginia round-leaf birch.
Brassicaceae, Mustard family:
Arabis macdonaldiana—McDonald's rock cress.
Erysimum capitatum var. *angustatum*—Contra Costa wallflower.
Crassulaceae, Stonecrop family: *Dudleya traskiae*—Santa Barbara Island liveforever.
Fabaceae, Pea family:
Astragalus perianus—Rydberg milk-vetch.
Baptisia arachnifera—hairy rattleweed.
Lotus scoparius ssp. *traskiae*—San Clemente broom.
Vicia menziesii—Hawaiian wild broad-bean.
Hydrophyllaceae, Waterleaf family: *Phacelia argillacea*—unnamed phacelia.
Lamiaceae, Mint family: *Pogogyne abramsii*—San Diego pogogyne.
Liliaceae, Lilly family: *Trillium persistens*—persistent trillium.
Malvaceae, Mallow family: *Malacothamnus clementinus*—San Clemente Island bushmallow.
Onagraceae, Evening-primrose family:
Oenothera avita ssp. *eurekensis*—Eureka evening-primrose.
Oenothera deltoides ssp. *howellii*—Antioch Dunes evening primrose.

Poaceae, Grass family:
Orcuttia mucronata—Crampton's Orcutt grass.
Swallenia alexandrae—Eureka dune grass.
Zizania texana—Texas wild-rice.
Ranunculaceae, Buttercup family:
Aconitum noveboracense—northern wild monkshood.
Delphinium kinkiense—San Clemente Island larkspur.
Scrophulariaceae, Snapdragon family:
Castilleja grisea—San Clemente Island Indian paintbrush.
Cordylanthus maritimus ssp. *maritimus*—salt marsh bird's beak.
Pedicularis furbishiae—Furbish lousewort.

[6]Requires supplementation except insofar as it applies to the following species, which have already been the subjects of a final rulemaking.

Fishes:
Etheostoma boschungi—Slackwater dater.
Hybopsis cahni—Slender chub.
Hybopsis monacha—Spotfin chub.
Noturus flavipinnis—Yellowfin madtom.
Speoplatyrhinus poulsoni—Alabama cave fish.

[6]Withdrawn except insofar as it applies to the following species, which have already been the subject of a final rulemaking.

Plants:
Brassicaceae, Mustard family: *Erysimum capitatum* var. *angustatum*—Contra Costa wallflower.
Onagraceae: *Oenothera deltoides* ssp. *howellii*—Antioch Dunes evening-primrose.

[7]Withdrawn insofar as it applies to areas C, D(3), D(4), D(5), and D(6). The other proposed areas have either been previously withdrawn or have been subjects of a final rulemaking.

Comments received from the public concerning the proposals will be considered in the formulation of supplements to meet the requirements of the Amendments. In addition, comments concerning supplemented proposals will be solicited by letter from all persons who have made substantive comments on the original proposals.

The primary author of this notice is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

Dated: February 26, 1979.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

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